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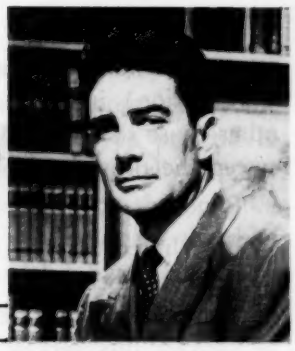

DAN SMOOT

IMPEACHING EARL WARREN - PART I

In the past few weeks, I have received an astonishing volume of mail from individuals all over the United States, saying they are participating in activities intended to urge upon Congress impeachment proceedings against Earl Warren, Chief Justice of the Supreme Court.

Some are working as individuals, writing to their Congressman and Senators and encouraging friends to do likewise; some are circulating petitions, getting names of citizens who want Warren impeached, and then sending the petitions on to their Congressman. Some are working in organizations (such as The John Birch Society, whose national headquarters are at Belmont, Massachusetts). Others are forming new discussion-and-letter-writing organizations.

If they work hard enough, they will succeed, because there are ample grounds for impeachment, not only of Warren, but of all nine Supreme Court Justices.

Earl Warren became Chief Justice of the United States Supreme Court on October 5, 1953, having been given this job as a political reward for giving Dwight D. Eisenhower the support of the California delegation at the Republican National Convention in 1952.

This bit of political payola placed in our nation's highest judicial post a man whose education, training, and experience would not fully qualify him to be a good justice of the peace. Warren is the only Chief Justice in history who had absolutely no previous judicial experience. He is not only abysmally ignorant in the field of constitutional law but is also opposed to the principle of limited constitutional government which is the essence of our Constitution.

In short, Earl Warren is a socialist who thinks government has unlimited power to tax and spend for anything which government claims to be good. He has the same attitude toward the Constitution that communists and all other socialists have: namely, if any provision of the Constitution seems, in any particular circumstance, to be convenient for the cause of socialism, Earl Warren will uphold that provision, in that particular circumstance. If, in another circumstance, the

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same provision (or any other provision of the Constitution) is an obstacle to socialism or any other cause that Earl Warren likes, Warren will sweep the provision aside with a new "interpretation."

The United States Supreme Court, under Earl Warren, has been used as an effective instrument of communist world conquest. The Court has performed this service for communism with a series of decisions which have paralyzed America's efforts to investigate, expose, and prosecute the communist conspiracy in America; which have aided subversive, and other power-hungry, forces in creating social turmoil and in fostering organized tyranny; which have otherwise aided and abetted the sworn enemies of the United States; which have invaded the constitutional powers of the Congress; which have invaded the constitutionally reserved powers of the sovereign states; which have invaded the domain of private rights specifically protected by the Bill of Rights.

Other Supreme Court Justices sometimes disagree with Warren's decisions and write dissenting opinions. A review of dissenting opinions, in enough Supreme Court split-decision cases, would reveal that every member of the present Court has been formally accused, by one or more of his fellow Supreme Court Justices, of behavior which should be impeachable under the Constitution and laws of the United States.

All nine justices of the present Supreme Court should, and could, be impeached and removed from office; and the U. S. Senate should refuse to confirm the appointment of any new Supreme Court justice who is not thoroughly proven an able and experienced judge, a profound scholar of constitutional law and constitutional history, and an American widely known as a man who understands and respects the Constitution.

The public could accomplish this goal if it put enough continuous pressure on Congress; and the public should be satisfied with nothing less; but it is a sensible tactic to take one step at a time: remove the Supreme Court Justices one at a time, beginning with Earl Warren, the worst of the lot.

Impeachment

Here is what the Constitution says about impeachment:

"The House of Representatives shall . . . have the sole power of impeachment."

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present."

"The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

Treason is defined in the Constitution as "levying war against . . . (the United States), or in adhering to their enemies, giving them aid and comfort."

High Crimes are defined by some law text writers as tresspasses upon the constitutional rights of the American people by an officer or agent of government, whether appointed or elected to office. The definition of "high crimes" which was developed during the impeachment proceedings against President Johnson is this:

"A high crime consists of a violation of the Constitution by an official, through an act committed or omitted, without the violation of any positive law, by abuse of discretionary powers from improper motives, or from improper purpose."

Misdemeanors, as used in the Constitution in connection with the impeachment of officials, means bad behavior.

The Constitution says that federal judges shall hold their offices—not for life—but during good behavior. It also says that "judicial officers . . . shall be bound by oath or affirmation to support this Constitution."

Reasonable impeachment proceedings could be brought against Warren for high crimes, misdemeanors, failure to support the Constitution, and possibly for treason.

The evidence against Warren would consist of:

(1) The Constitution of the United States;

(2) Warren decisions which violate the Constitution;

(3) Minority opinions of his fellow justices who disagreed with him in these particular decisions and who, in explaining their disagreements, officially accused Warren of impeachable offenses;

(4) Testimony of distinguished Americans who already are on record, accusing Earl Warren of High Crimes, Misdemeanors, and failure to support the Constitution.

A substantial amount of the available evidence against Earl Warren will be presented in this *Report* next week. At present, let's consider the case which set the precedent for the Warren Court's lawless behavior: the Brown *vs.* School Board Case, decided May 17, 1954.

1954 School Case

In 1896, the Supreme Court held that segregation in public schools is not unconstitutional, if the segregated races are provided equal facilities; but on May 17, 1954, the Supreme Court reversed itself. In any free, civilized society, citizens must know, with reasonable certainty, what the law of the land is, else it is impossible for them to be law-abiding. When the Supreme Court reverses its own decisions, it is saying that what was legal yesterday is illegal today but may again be legal tomorrow, depending on how the Supreme Court feels about it.

In such a state of affairs, where people do not know from day to day what the law is or may be tomorrow, you have essentially a lawless society, kept orderly only by the force of dictatorship.

That is, basically, the state of affairs which the Warren Court created by its May 17, 1954, decision. The legal havoc was compounded by the fact that Earl Warren did not even pretend to base the Brown Case decision primarily on law or the Constitution: he based it on the opinions of modern sociologists and psychologists, the chief of which was Gunnar Myrdal, a Swedish socialist with a communist front record who, in a book called *An American Dilemma*, had proclaimed his utter contempt for the Constitution of the United States.

In that portion of the Brown Case decision where Warren did refer to the Constitution, he inferentially admitted that the Court had no Constitutional grounds for its decision. He cited the Fourteenth Amendment, admitting that the Amendment does not apply to the problem of segregation in public schools, because, in 1868 when the Fourteenth Amendment was adopted, there were no public schools in the South.

But now, Mr. Warren says, he wants to stretch the meaning of the Fourteenth Amendment, because the communists and socialists whom he cites as modern authorities think this should be done.

Evidence

At least 1000 learned and distinguished Americans could testify at an impeachment trial that Earl Warren has committed high crimes and misdemeanors, and has failed to support the Constitution. Below are a few samples.

The Honorable M. T. Phelps, justice of the Arizona Supreme Court, has had more experience as a judge than all nine justices of the U. S. Supreme Court, put together, had before they were appointed to their high offices. On September 18, 1957, Judge Phelps made a speech at the Hiram Club in Phoenix. He reviewed this nation's drift away from constitutional government during the past 20 years, saying that our descent into dictatorship has become clearly apparent since Eisenhower appointed Earl Warren chief justice.

Speaking of the Warren Court, Judge Phelps said:

"It is the design and purpose of the court to

usurp the policy-making powers of the nation.

"By its own unconstitutional pronouncements it would create an all-powerful, centralized government in Washington and subsequent destruction of every vestige of states' rights, expressly and clearly reserved to the states under the 10th Amendment of the Constitution . . . .

"Regardless of what we as individuals may think about the justice or injustice of segregation, I here assert without hesitation or reservation that the (Supreme Court's May 17, 1954) decision was not based upon logic or law.

"I further charge that the processes followed in reaching the decision's conclusion violate all procedures of due process known to American jurisprudence . . . .

"I honestly view the supreme court with its present membership and predilections a greater danger to our democratic form of government and the American way of life than all forces aligned against us outside our boundaries."

Judge Phelps' testimony could be supported by the testimony of 36 chief justices of state Supreme Courts who, meeting at The Conference of Chief Justices, in Pasadena, California, on August 23, 1958, adopted a formal resolution accusing the Warren Court of abusing the power given it by the Constitution. Their testimony could be buttressed by that of United States Congressman Noah Mason (Republican, Illinois), who on May 13, 1957, in a speech on the floor of the House, said:

"Most of the recent Supreme Court decisions are based upon the social, economic, and political convictions . . . of the Justices rather than upon legal precedents or constitutional grounds . . . .

"Nothing is sacred nor permanent under the present uncontrolled Supreme Court. Century old customs and previous Court Rulings may now be overturned by a capricious Supreme Court, a majority of whose Justices have predilections that influence or dominate their opinions . . . .

"I say that under the present Supreme Court we have been traveling on the road to tyranny. . . .

"The Founding Fathers and the makers of the Constitution agreed that an uncontrolled Supreme Court meant despotism, and must be guarded against. We now have such a Court. . . . Congress must establish some form of control over the Supreme Court . . . . That is the task Congress must face up to and must accomplish before it is too late . . . ."

The testimony of Senator James O. Eastland (Democrat, Mississippi) in an impeachment trial against Earl Warren could include remarks which Senator Eastland made in a speech to the Senate in 1955:

"The Supreme Court . . . (has) been indoctrinated and brainwashed by left-wing pressure groups; . . . individual members of the Court . . . (have been) influenced by and . . . (are) guilty of grossly improper conduct in accepting awards and emoluments from groups and organizations interested in political litigation before the Court and bent on changing and destroying our American way of life . . . .

"The Court has not only arrogated to itself powers which were not delegated to it under the Constitution of the United States and has entered the fields of the legislative and executive branches of the Government, but they are attempting to graft into the organic law of the land the teachings . . . and social doctrines arising from a political philosophy which is the antithesis of the principles upon which this Government was founded.

"The origin of the doctrines can be traced to Karl Marx, and their propagation is part and parcel of the conspiracy to . . . destroy this Government through internal controversy . . . .

"In the rendition of the opinion on the school segregation cases the entire basis of American jurisprudence was swept away. There is only one other comparable system of jurisprudence which is based upon . . . vacillating, political, and pseudo scientific opinion—the Peoples' Courts of Soviet Russia.

"In that vast vacuum of liberty, (the Soviet Union) . . . the basis of jurisprudence is the . . . ever-changing winds of pseudo-authority.

"And that today is the basis of American jurisprudence as announced by a unanimous opinion of our Supreme Court . . . ."

The testimony of former Senator William E.

Jenner (Republican, Indiana) in an impeachment of Earl Warren could include remarks which Jenner made in a speech to the Senate on August 7, 1957. After a discussion of cases in which the Warren Court had flouted the Constitution, law, and judicial precedents to render decisions helpful to communists, Senator Jenner said:

"Reasonable men may err. If the Court had erred only once or twice in these decisions involving the greatest threat to human freedom which history ever had to look upon, reasonable men could find excuses for it. But what shall we say of this parade of decisions that came down from our highest bench on Red Monday after Red Monday?"

The testimony of U. S. Congressman Gordon H. Scherer (Republican, Ohio) in an impeachment of Earl Warren could include remarks which Mr. Scherer made in a public statement released on June 26, 1957. Among other things, Mr. Scherer said of the Warren Court:

"The Court has usurped the powers of the Congress. It has rewritten and nullified laws to fit its own social, political, and economic philosophies. It has destroyed basic and fundamental states' rights. It has invaded and taken over prerogatives of the executive branch. It has supplanted the jury and trial judge when expediency demands. It has handcuffed the police and F.B.I. in criminal cases. . . ."

All members of the American Bar Association's Special Committee on Communist Tactics, Strategy, and Objectives—which prepared the 1958 Annual Report—could be subpoenaed to testify in an impeachment trial against Earl Warren. The 1958 ABA Special Committee Report lists and discusses twenty cases which the Warren Court had decided in two years, showing that all twenty decisions aided and abetted the communist conspiracy in America.

Resubmit the 14th Amendment

The facts and decisions in a score of cases, which will be reviewed in this *Report* next week, reveal, beyond any possibility of doubt, that Earl Warren logically could be impeached by the U. S. House of Representatives and tried by the U. S. Senate on charges of failure to support the Constitution, and of committing high crimes, and misdemeanors in office, and probably treason.

Many will say that it is ridiculous to suggest impeachment of Earl Warren, because such a thing could not, "as a practical matter," be done.

It will not be easy. The public will have to exert tremendous pressures on the House of Representatives before it can be compelled to bring impeachment charges against Warren. It will take hard work on the part of millions of Americans to get this job done. Earl Warren and his leftwing cohorts on the Supreme Court have arrogated so much unconstitutional power to themselves and have done so much damage to our constitutional system that they seem secure *because* of their unlawful power. Here is a good test to see whether the American people are willing to spend the time and exert the effort necessary to protect their own freedom.

What if Warren and all the other Supreme Court Justices were impeached, convicted, and removed from office? What then? What would we do about the legacy of ruin which Warren will leave behind? He has, by court fiat, made pro-communist, socialist political opinions part of the "law of our land." Hence, the evil he has done will live on after he is gone.

It will, unless other action besides removing him is taken.

Earl Warren's most damaging decisions have no constitutional basis at all, except in the Fourteenth Amendment; and the Fourteenth Amendment is not a valid part of the Constitution. The Fourteenth Amendment ("proclaimed" a part of the Constitution on July 20, 1868, when the Thaddeus Stevens Reconstruction Congress controlled the federal government) was never legally submitted to the states for ratification, and was never

legally ratified by three-fourths of the state governments. In the south, some military governments of occupation which did not represent the people "ratified" the 14th Amendment. In other states, the legitimate governments were forced, at the point of army bayonets, to ratify; but three-fourths of the states never legally ratified. Some of the northern states refused to ratify, because northern patriots knew the thing was illegal.

What can we do about it now, almost a century later? As in every case involving a fundamental dispute about the powers and functions of the federal government, we should let the people decide, according to the provisions of the Constitution. Congress should re-submit the Fourteenth Amendment for *legal* ratification or rejection.

Congress could, and should, enact a Joint Resolution saying something like this:

"Whereas there is serious and reasonable doubt that the Fourteenth Amendment to the Constitution was ever legally ratified; and

"Whereas, this Amendment has nonetheless been used as a basis for Congressional legislation, Court decisions, and other legal actions;

"Be it, therefore, resolved that the entire Fourteenth Amendment be resubmitted herewith for ratification by due constitutional process;

"Be it resolved further that if this Amendment is not duly ratified within three years after the date of submission, the entire so-called Fourteenth Amendment shall be declared null and void — and all laws, court decisions, and other legal actions based on the so-called Fourteenth Amendment shall also be declared null and void."

The Fourteenth Amendment is, at best, an ambiguous, confusing, and unnecessary appendage to our Constitution. It gives the people no guarantee of rights not already given them, in simpler and more emphatic terms, elsewhere in the Constitution.

A first-rate national political figure could do an invaluable service to his country if he would take the lead in having this thing submitted to the people for a legal, and final, determination of whether it should be a part of our fundamental document of government.

I am convinced that if the people could force Congress to re-submit the Fourteenth Amendment, the thing would be rejected, because if there were enough people sufficiently well informed to know that the thing should be re-submitted, they would know enough to defeat it — and that would undo most of the major damage that Earl Warren has done.

Curbing the Court

But this, even if accomplished, will take a long time. In the meantime, everything else that needs to be done could be accomplished by Acts of Congress. The Constitution very clearly gives Congress the power to control and regulate the appellate jurisdiction of the Supreme Court:

". . . the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

It is obvious, therefore, that Congress has neglected its constitutional duty to check the lawless behavior of the Warren Court. A substantial number of U. S. Congressmen and Senators have tried, very hard, since 1955 to enact laws to curb the Warren Court, but have been defeated by leftwingers.

Bills introduced on the first day of the present session of Congress which deserve the support of all patriots are S 3, introduced by Senator John L. McClellan (Democrat, Arkansas) in the Senate, and HR 3, introduced in the House by Congressman Howard Smith (Democrat, Virginia). These two bills (which are practically identical) have 21 sponsors in the Senate in addition to Senator McClellan and numerous sponsors besides Congressman Smith in the House.

They are designed to eliminate the evil effects of the Warren Court decision in the Steve Nelson and similar cases — decisions which lay down the rule that if Congress has legislated in a given field, then the federal law pre-empts that field and prohibits state governments from legislating in the same field.

The proposal embodied in S 3 and HR 3 passed the House in 1958 and was killed by one vote (Lyndon Johnson's) in the Senate. It passed the House again in 1959, but again failed in the Senate.

The Bill would do some immediate good; but more is needed. Congress has the authority to enact, and should enact, a law carefully specifying the limits of Supreme Court power in "interpreting" the Constitution of the United States.

The Congress and the people have been sitting, as if hypnotized, presuming that nothing can be done about the oligarchy of nine men who have arrogated to themselves the power to make and rewrite laws for this nation, by the hoax of "re-interpreting" our Constitution.

There is an almost universal misconception that the Constitution designates the Supreme Court as the "final arbiter," the last word, on the meaning of the Constitution; and that whatever interpretation the Court may decide to read into the Constitution is "law of the land" from which there is no appeal.

Actually the judiciary created by the Constitution was intended to be the weakest of the three branches of the federal government.

On constitutional questions, the only thing the Supreme Court can do *legally* is to make a judicial finding as to the *original* meaning of the constitutional provision in question. It was the Constitution *which the framers wrote* that was adopted, by the people, as organic law for this nation; and only the people can legally change it — by the formal process of amendment which is set out in the Constitution.

The Supreme Court can not *legally* reverse itself — as it did in the school segregation case. After the court *first* makes a judicial finding of the meaning of some provision of the Constitution, the nation, and the court itself, are bound by that finding. If that finding was wrong — or later turns out to be undesirable — it can be changed only by the people through constitutional amendment.

If Congress would enact a law, carefully out-

WHO IS DAN SMOOT?

Dan Smoot was born in Missouri. Reared in Texas, he attended SMU in Dallas, taking BA and MA degrees from that university in 1938 and 1940.

In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for the degree of Doctor of Philosophy in the field of American Civilization.

In 1942, he took leave of absence from Harvard in order to join the FBI. At the close of the war, he stayed in the FBI, rather than return to Harvard.

He served as an FBI Agent in all parts of the nation, handling all kinds of assignments. But for three and a half years, he worked exclusively on communist investigations in the industrial midwest. For two years following that, he was on FBI headquarters staff in Washington, as an Administrative Assistant to J. Edgar Hoover.

After nine and a half years in the FBI, Smoot resigned to help start the Facts Forum movement in Dallas. As the radio and television commentator for Facts Forum, Smoot, for almost four years spoke to a national audience giving both sides of great controversial issues.

In July, 1955, he resigned and started his own independent program, in order to give only one side — the side that uses fundamental American principles as a yardstick for measuring all important issues.

If you believe that Dan Smoot is providing effective tools for those who want to think and talk and write on the side of freedom, you can help immensely by subscribing, and encouraging others to subscribe, to *The Dan Smoot Report*.

lining, in these terms, the Supreme Court's duty and powers to decide upon the meaning of the Constitution — not by reference to present-day needs or laws, but by reference *only* to the historical documents which reveal precisely what the writers of the Constitution intended (such documents as: The Federalist Papers, the stenographic notes on debates at the Constitutional Convention at Philadelphia in 1789; the published papers of the actual writers of the Constitution; and published notes on debates in the legislatures and conventions of the individual states which ratified the original Constitution) — it would keep future Supreme Courts from corrupting our organic document of government.

And if Congress would write into this same act a provision nullifying all laws and other legal actions based on Supreme Court decisions not consonant with the meaning of this act — Congress would eliminate the legacy of evil which Earl Warren and other Supreme Court Justices like him have prepared for our nation.

This does not mean that contemporary America must be bound inescapably by the precise meaning which 18th Century Americans wrote into our Constitution. If we ever compel the Congress and the President to act in strict accordance with the clear meaning of our Constitution (by adopting the proposed Utt Amendment, discussed in this *Report,* "How to Abolish the Federal Income Tax," January 16, 1961); and if we ever compel the Supreme Court to stay within constitutional bounds — the people might decide that our Eighteenth Century Constitution is not fully adequate for our present needs. If they should so decide, they should change their Constitution by the amendment process which it specifies. Whenever the people permit any branch of the Federal government (executive, legislative, or judicial) to usurp power to change the Constitution, for any reason whatever, the people abandon their only guarantee against dictatorship.

In fact, a government which has unlimited power to determine how much power it has "to promote the general welfare" or to do anything else, *is* a dictatorship.

Next Week

Next week, this *Report,* "Impeaching Earl Warren — Part II," will review specific cases in which Warren Court decisions are so palpably detrimental to the national interest and so obviously unfounded in law or constitutional doctrine that they provide adequate grounds for impeachment proceedings against Earl Warren.

For prices on single and multiple copies of this *Report,* see bottom of the first page. How many people do you know who should read this *Report*?

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